

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

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In the matter of )  
 )  
HERBERT L. SCHOENBOHM )  
Kingshill, Virgin Islands )  
 )  
For Amateur Station and )  
Operator Licenses )  
 )

WT Docket No. 95-11

TO: The Full Commission

DOCKET FILE COPY ORIGINAL

**EXCEPTIONS OF HERBERT L. SCHOENBOHM TO INITIAL DECISION OF  
ADMINISTRATIVE LAW JUDGE EDWARD LUTON AND BRIEF IN SUPPORT OF  
EXCEPTIONS**

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February 23, 1996

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EXCEPTIONS**

Pursuant to Section 1.276 of the Commission's Rules and Regulations, Herbert L. Schoenbohm ("Schoenbohm"), by his attorney, hereby respectfully excepts to the Initial Decision of Administrative Law Judge Edward Luton, released in this proceeding on February 2, 1996, and submits the following Exceptions and Brief in support of Exceptions:

**I. CONCISE STATEMENT OF THE CASE**

1. This case involves an application for renewal of the amateur license of Herbert L. Schoenbohm (KV4FZ). On January 30, 1995, the Wireless Telecommunications Bureau ("WTB") designated Schoenbohm's license for a hearing on an issue to determine whether Schoenbohm had been convicted of a felony of such magnitude as to require denial of the renewal application. On June 7, 1995, the ALJ enlarged the issues to include an "ex parte" issue. The

issues, as originally designated and enlarged, are as follows:

(a). To determine whether, in light of the conviction described in the Hearing Designation Order, Herbert L. Schoenbohm is qualified to renew his amateur service license.

(b). To determine whether Herbert L. Schoenbohm violated Section 1.1210 of the Commission's Rules, 47 C.F.R. §1.1210, by soliciting or encouraging others to make a presentation that he was prohibited from making.

(c). If it is determined that Herbert L. Schoenbohm did violate Section 1.1210 of the Commission's Rules, 47 C.F.R. §1.1210, to determine the effect of such a violation on his qualifications to renew his amateur service licenses.

(d). To determine, in light of the foregoing issues, whether granting Herbert L. Schoenbohm's application would serve the public interest, convenience and necessity.

2. A hearing was held on August 8, 1995, before ALJ Luton, the administrative law judge designated to preside in the proceeding. Schoenbohm and the WTB each filed proposed findings of fact and conclusions of law and reply findings. On February 2, 1996, the ALJ released an initial decision, proposing to deny the license renewal. In so doing, the ALJ concluded that Schoenbohm's testimony at the hearing exhibited a "lack of candor" and that Schoenbohm's conviction of making telephone calls through the use of a "counterfeit access device" was of such a nature as to cast out upon his future truthfulness in dealing with the FCC.

3. As will be shown in these Exceptions, there was no lack of candor in Schoenbohm's testimony. As the ALJ correctly

found, Schoenbohm twice specified in written statements filed with the Commission that he did, in fact, use unauthorized codes to make long distance calls. He never denied that in his hearing testimony. Moreover, the crime for which he was convicted was a trivial offense compared to the crimes committed by other renewal applicants whose applications have been granted by the FCC, i.e., murder and possession of marijuana with intent to distribute same. Therefore, the Initial Decision must be reversed.

## II. QUESTIONS PRESENTED

1. Where a renewal applicant had an exemplary record of public service which was not challenged by the ALJ, and where the renewal applicant was never convicted of any crime, not even a speeding ticket until he was 53 years old, and where the only crime committed consisted of using certain unauthorized telephone numbers to make long distance calls, and where the renewal applicant had already served his sentence for that crime, and where the renewal applicant had been welcomed back into the community and appointed to a high administrative position by the Government of the Virgin Islands and the Delegate to the Congress of the United States (thereby evidencing the applicant's rehabilitation in his community), did the ALJ err when he refused to grant renewal?

2. Where the FCC has renewed licenses even where the applicants have been convicted of murder or possessing marijuana with intent to distribute, did the ALJ err when he refused to renew the license of an amateur radio operator who had been convicted of using certain unauthorized codes to make long distance telephone

calls without paying for them?

3. Where the renewal applicant admitted twice in written statements that he had used unauthorized codes to make long distance telephone calls without paying for them, but explained at the hearing that the "counterfeit access device" used to make such calls was simply his knowledge of the codes (as opposed to the use of a counterfeit credit card, plate or electronic apparatus), did the ALJ err when he found that the hearing testimony, which was completely truthful, lacked candor?

### **III. ARGUMENT**

#### **A. Factual Errors and Omissions**

1. At the outset, the ALJ made a number of errors of either fact or omissions of fact which may have influenced his judgment. At ¶4 of the Initial Decision, the ALJ quotes from a portion of Section 1029 of Title 18 of the United States Code, a section which is entitled "Fraud and Related Activity in Connection with Access Devices". The ALJ quoted ¶(a)(1), which was the specific section which Schoenbohm was convicted of violating. Section (a)(1) relates to using and trafficking in counterfeit access devices. However, other subsections of Section 1029 also make it a crime to possess counterfeit access devices. For example, subsection (a)(3) makes it a criminal offense to possess 15 or more counterfeit access devices or unauthorized access devices. Subsection (a)(4) makes it a crime to possess device-making equipment. Subsection (a)(5) makes it a crime to possess a telecommunications instrument that has been modified or altered to

obtain unauthorized use of telecommunications service. Subsection (a)(6) makes it a crime to possess with intent to defraud scanning receivers or hardware or software used for altering or modifying telecommunications instruments to obtain unauthorized access to telecommunications service. For the convenience of the reviewing authority, a complete copy of Section 1029, Title 18 is attached as Exhibit A.

2. The ALJ purported to quote from Section 1029(e), which contains the definitions of "access device" and "counterfeit access device". However, he did not quote correctly. According to the ALJ (ID, ¶5), Section 1029(e)(1) defines the term "access device" as follows:

"(1) The term access device' means any card, plate, code, account number or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds (other than a transfer originated solely by paper instrument)."

In fact, that is not what Section 1029(e)(1) says. It actually reads as follows:

"(1) the term 'access device' means any card, plate, code, account number, electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier, or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds (other than a transfer originated solely by paper instrument)." (Emphasis supplied.)



3. The ALJ also omitted a definition set forth in Subsection (e)(6). That subsection read as follows:

"(6) The term 'device-making equipment' means any equipment, mechanism, or impression designed or primarily used for making an access device or a counterfeit access device; and"

4. These omissions are very important. The omitted language makes it very clear that unauthorized and counterfeit access devices are not confined to the simple knowledge of or use of unauthorized telephone numbers. The statute also makes it unlawful for people to engage in the production and manufacture of counterfeit credit cards and plates. In fact, it is unlawful to even possess, with criminal intent, counterfeit credit cards or mechanical access devices, e.g., scanning receivers, and computer software and hardware, designed to unlawfully access the telephone system.

5. The questions asked by Schoenbohm's counsel at the hearing and Schoenbohm's answers were calculated to show, truthfully, that Schoenbohm did not possess, produce, or use any counterfeit credit cards or other mechanical devices to unlawfully make long distance calls. Unless the entire statute is considered, including the prohibition against such activities, neither the questions nor the answers made any sense. The failure of the ALJ to consider the entire statute, and his omission of pertinent parts of the statute which deal with such unauthorized mechanical devices, may well have resulted in his failure to correctly understand that Schoenbohm's testimony was not intended to deny

what he had already admitted in writing, i.e., that he had made unauthorized long distance telephone calls, but rather to draw a distinction between the possession and use of certain telephone numbers in his mind and the possession, production and use of such mechanical devices such as "blue boxes" and counterfeit credit cards.

6. Additionally, at ¶12 of his Initial Decision, the ALJ speaks of an apparent conflict between Schoenbohm's declaration of May 23, 1995, that Schoenbohm "now makes his living as a talk show host at a greatly reduced salary", and Schoenbohm's testimony at the hearing that he is no longer compensated for broadcasting his radio show, but now performs that service on a volunteer basis. There is no conflict between the written declaration and the hearing testimony.

7. What happened is this. The original exhibit exchange was due in this proceeding on May 23, 1995. Shortly before that date, Schoenbohm filed a declaration which was admitted in evidence as Schoenbohm Exhibit 1, reflecting the facts as of that date. The declaration, like other Schoenbohm exhibits (as originally exchanged), was not signed or dated. At the hearing, Schoenbohm signed all of his exhibits, dating them as at the hearing date. Subsequently, however, Schoenbohm realized that his first exhibit should have been dated as of the time when it was originally exchanged. Therefore, he asked his counsel to enter into a stipulation with the WTB to that effect. Such a stipulation was so entered. See letter of counsel attached and marked Exhibit B.

8. Subsequently, as Schoenbohm's situation changed, he exchanged another exhibit (Schoenbohm Exhibits 2), reporting the change. Therefore, Schoenbohm properly reported the change in his primary employment from radio talk show host to employment with the Virgin Islands government as Director of Transportation. Just prior to the hearing, Schoenbohm obtained a part-time job as District Field Representative for Victor O. Frazer, the delegate who represents the Virgin Islands in the U.S. House of Representatives. Schoenbohm reported that job by testimony at the hearing.

9. At ¶15 of the Initial Decision, the ALJ excerpts certain remarks from a tape recording from Mr. Hugh J. LeBlanc at approximately 8:30 a.m. on April 3, 1995. With all due respect, the ALJ's excerpts are bowdlerized. The actual text from the pertinent transcript excerpts is attached and marked Exhibit C. It contains a number of remarks by Mr. LeBlanc which are, perhaps, inconsistent with political correctness. If, however, the ALJ was going to rely upon Mr. LeBlanc's transcript, he should have relied upon the transcript as written.

**B. The Decision of the ALJ to Deny Renewal Because of  
Schoenbohm's Criminal Conviction Is at Variance with  
Commission Precedent**

10. Herbert Luther Schoenbohm was born November 10, 1939, at Fargo, North Dakota (Tr. 38). Until the year 1992, Schoenbohm had never been convicted of any crime other than parking

tickets (Tr. 39).<sup>1</sup> In the year 1992, however, Schoenbohm was convicted of producing or using a counterfeit telephone access device, i.e., he was convicted of having knowledge of and using certain telephone numbers to make long distance telephone calls without paying for them (Tr. 38; Schoenbohm Exhibit 1, pg. 1). His conviction stemmed from a dispute between Schoenbohm and a local retailer of long distance service (Schoenbohm Exhibit 7, pg. 2). He was not convicted of actually stealing money or accessing the account of any telephone subscriber, and he did not steal any money or cause the account of any subscriber to be debited (Schoenbohm Exhibit 7, pg. 2; Tr. 39). Subsequent to his conviction, he has not been convicted of any other crimes (Tr. 39).

11. While the conviction occurred in 1992, the events that resulted in the conviction occurred eight years prior to this FCC hearing; in 1987. Subsequently, Schoenbohm served the full two months of confinement to which he was sentenced and the two year period of probation (Schoenbohm Exhibit 1, pg. 1).

12. Schoenbohm suffered as a result of his conviction. From 1979-1992, he had been Chief of Communications for the Virgin Islands Police Department, a position which he enjoyed very much. As a result of his conviction, he lost that job; lost all of the retirement benefits associated with the job (amounting to at least \$150,000); and lost his health insurance. He was forced to make a living as a radio talk show host at a greatly reduced salary

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<sup>1</sup>Remarkably, Schoenbohm had not even been convicted of speeding or any other moving traffic offense (Tr. 39).

(Schoenbohm Exhibit 1, pg. 1). Also as a result of his conviction, he served two months of confinement and was on probation,<sup>2</sup> which limited his activities for two full years (Schoenbohm Exhibit, pg. 1).

13. Schoenbohm continues to contend that he was wrongfully convicted and he has filed an appeal to the Third Circuit Court of Appeals, contesting the denial of certain motions that sought to have his conviction vacated (Schoenbohm Exhibit 1, pg. 1). Because of the pendency of the appeal, Schoenbohm cannot express remorse for his crime, because doing so would jeopardize the appeal. Schoenbohm does, however, express remorse for the trouble which his conviction has caused to both the amateur community and the FCC (Schoenbohm Exhibit 1, pg. 1).

14. Schoenbohm has used his amateur radio license for good purposes. In March of 1978, FCC Commissioner Margita E. White appointed him Chairman of the State Emergency Communications Committee for the Virgin Islands, a post which he held until his conviction (Schoenbohm Exhibit 1A). On May 29, 1981, FCC Commissioner Joseph R. Fogarty sent Schoenbohm a Planning Award for the work which he did as Chairman of the State Emergency Communications Committee in setting up the plan for the Virgin Islands (Schoenbohm Exhibit 1B). On June 15, 1987, the FBI commended Schoenbohm for his assistance in apprehending one Eduardo Mena, a man who attempted to hijack a Virgin Islands seaplane to

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<sup>2</sup>The word "parole" in ¶3 of Schoenbohm Exhibit 1 is an error; Schoenbohm was placed on probation. See the exhibits of the WTB.

Cuba (Schoenbohm Exhibit 1C). In that connection, and at the request of the FBI, Schoenbohm used his amateur radio equipment in connection with the hijacking incident (Schoenbohm Exhibit 1, pg. 2). During the famous 1969 journey of Thor Heyerdahl across the Atlantic Ocean in the reed boat "Ra", Schoenbohm was in daily contact with the Ra and, when the boat finally had to be abandoned, Schoenbohm is the person who received the information by ham radio and succeeded in arranging for Heyerdahl's safe rescue at sea (Schoenbohm Exhibit 1, pg. 2). Under date of November 14, 1979, Schoenbohm received a commendation from the Government of the Virgin Islands for his service through ham radio in providing communications during the tropical storms (Hurricanes David and Frederick) (Schoenbohm Exhibit 1D). Schoenbohm also used his ham radio communications in an effort to save lives and property during Hurricane Hugo and, on December 14, 1989, he received a commendation for that work from the Virgin Islands Police Department (Schoenbohm Exhibit 1E). On October 12, 1992, the American Red Cross cited Schoenbohm for the work which he did through ham radio in providing communications during Hurricane Andrew (Schoenbohm Exhibit 1F).

15. Recently, Schoenbohm was appointed Director of Transportation under the Department of Property and Procurement of the Virgin Islands Government. This is a \$42,000 per annum appointment; it is a responsible position; and Schoenbohm contends that it demonstrates that he is continuing his rehabilitation from his earlier conviction (Schoenbohm Exhibit 2). In connection with

his work as Director of Transportation, Schoenbohm has been entrusted by the Virgin Islands Government with the handling of money and other responsible matters, including large bids, proposals and setting of specifications, awarding contracts, and making arrangements for visiting dignitaries, governors, ambassadors, and premiers of other countries (Tr. 39). In his work, Schoenbohm supervises 20 people in the Transportation Division of Property and Procurement of the U.S. Virgin Islands Government (Tr. 40).

16. When Schoenbohm was hired to work for the Virgin Islands Government, he was interviewed for the position by Dr. Roy L. Schneider, the Governor of the Virgin Islands. At the time of the interview, Schoenbohm disclosed his criminal conviction to Governor Schneider, and the Governor was fully aware of the conviction. Nevertheless, the Governor hired Schoenbohm, anyway (Tr. 52).

17. Similarly, last June, Schoenbohm was appointed District Field Representative for Delegate Victor Frazer from the Virgin Islands. Delegate Frazer personally interviewed Schoenbohm for the job and Schoenbohm specifically disclosed his criminal conviction to the Delegate. Nevertheless, the Delegate hired him, anyway (Tr. 52-3). While the position of District Field Representative is a part-time position, it is a paying job (Tr. 52-3).

18. Until 1986, the FCC took cognizance of all felony convictions of whatever kind in passing upon the character

qualifications of an applicant for a construction permit or license. In that year, however, the Commission adopted a new policy for broadcast applicants, declaring that felony convictions would be considered only if those convictions were "broadcast related". Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179 (1986); recon., 1 FCC Rcd 421 (1986); appeal dismissed sub nom., National Association for Better Broadcasting v. FCC, 86-1179 (D.C. Cir. 1987).

19. In 1990, the FCC modified its original Policy Regarding Character Qualifications in a number of respects. It adopted a rule (47 C.F.R. §1.17), requiring all licensees, broadcast and non-broadcast, to respond truthfully to Commission inquiries. Additionally, it indicated that it would again consider felonies, in passing upon an applicant's qualifications to hold a license. At footnote 4 to its 1990 Policy Regarding Character Qualifications, the Commission set forth principles which would be applied in determining whether an applicant convicted of a felony would be considered to be rehabilitated. Footnote 4 reads as follows:

"Rehabilitation is generally a factor when misconduct occurred prior to the filing of the application in question. Whether an applicant has been rehabilitated will necessarily turn on the facts of each case. Among other factors, the Commission will consider: (1) whether the applicant has not been involved in any significant wrongdoing since the alleged misconduct occurred; (2) how much time has elapsed since the misconduct; (3) the applicant's reputation for good character in the community; and (4) meaningful measures taken by the applicant to prevent the future occurrence of misconduct. RKO General, Inc.,



5 FCC Rcd 642, 644 (1990). Further, where previous Commission consideration of the misconduct resulted in the denial of an application, the deterrent impact of our previous action may provide a basis for concluding that a recurrence of misconduct is unlikely. Id." 5 FCC Rcd at 3254.

20. The ALJ correctly recited Schoenbohm's good, if not outstanding, record as an amateur licensee. Schoenbohm has won awards for saving lives and property during the hurricanes which have hit the Virgin Islands. He was appointed by the FCC as the coordinator of the emergency communications plan for the Virgin Islands and received an award for his outstanding service. He was active in communicating with the boat "Ra" during the famous voyage of Thor Heyerdahl across the Atlantic, and he was instrumental in bringing about a successful rescue when the boat was no longer able to continue. Schoenbohm was also of assistance to the FBI and used his amateur radio equipment to assist the FBI in apprehending a hijacker.

21. In 1992, when Schoenbohm was convicted of his crime, he was 52 years old. The ALJ failed to make any specific finding concerning this matter, but it is extremely important. Schoenbohm had a spotless record, never having had even so much as a speeding ticket, until his initial conviction. The conduct which resulted in the conviction was remote in time, having occurred in 1987. Schoenbohm paid his debt to society and he suffered the additional indignity and financial loss of losing his job with the Virgin Islands Police Department.

22. In Richard Richards, 1995 WL 170663 (Rev. Bd. 1995),

the Review Board renewed the license of Richard Richards, the licensee of a low power television station in Sierra Vista, Arizona, notwithstanding the fact that Richards had been convicted of the felony of possessing with intent to distribute marijuana, and cultivating marijuana on federal property in violation of Title 21. U.S. Code, Sections 841(a)(1), 841(b)(1)(d), and 841(b)(5). The Review Board found that when Richards was arrested he had two pagers in his car and a mobile telephone at his ranch, which were apparently used in his marijuana operations (Richards at ¶5). Nevertheless, the Review Board did not conclude that the crime was "FCC-related", nor did it find that the felony was so serious as to deny review.

23. Here, Schoenbohm's conviction involved events which occurred approximately eight years ago. Thus, the events are remote in time. In Alessandro Broadcasting Co., 56 RR 2d 1568 (Rev. Bd. 1984), the Review Board granted a construction permit to an applicant, one of whose principals had committed second degree murder. In granting the application, the Review Board relied upon the fact that the second degree murder was "remote in time"; that the individual in question had paid his debt to society; and that he was rehabilitated. Here, as in Alessandro, the events leading to Schoenbohm's conviction were remote in time, and Schoenbohm has served his sentence. As will be seen, he is also rehabilitated.

24. In Richards, cited supra, the Review Board renewed the license of an individual convicted of growing and distributing marijuana, where the individual explained that, despite the fact

that he had been convicted of distributing marijuana to others, he had only grown sufficient marijuana for his own use and that he had been rehabilitated. Here, Schoenbohm has explained that his crime stemmed from a dispute with a local retailer of telephone service, and that he did not actually steal any money from anybody, nor debit the account of any legitimate telephone customer. Thus, the unrebutted evidence shows that nobody, except Schoenbohm, actually suffered any financial loss as a result of the events that led to Schoenbohm's conviction.

25. Schoenbohm also showed that he has been rehabilitated. Prior to his conviction he had lived 53 years without being convicted of any crime, except for parking tickets. Neither is there any evidence to show that Schoenbohm ever violated any FCC rules prior to his conviction. Subsequent to his conviction, he has not been convicted of any crimes, whatsoever. He has now found responsible employment with the Virgin Islands Department of Transportation and, in that capacity, he supervises 20 people and is regularly entrusted with the handling of money, contracts, bids, and other matters which require the trust of his employer. Additionally, he has obtained employment on a part-time basis with the delegate from the Virgin Islands to the U.S. Congress. When Schoenbohm obtained his current employment with the Virgin Islands Department of Transportation, he was interviewed by the Governor; he fully disclosed his conviction to the Governor; but was hired anyway. Similarly, when Delegate Frazer made Schoenbohm a paid, part-time member of Frazer's staff, Schoenbohm

fully disclosed his conviction to the Delegate, but was hired anyway. These things show that Schoenbohm enjoys a good reputation amongst responsible persons in the Virgin Islands community. They demonstrate the extent of his rehabilitation.

26. Significantly, the ALJ did not mention either the Richards case or the Alessandro case in his Initial Decision. However, these cases are extremely important. In Melody Music v. FCC, 345 F.2d 730, 733 (D.C. Cir. 1965), the Court of Appeals stressed that the FCC must treat similarly situated parties alike. See also McElroy Electronic Corp. v. FCC, 990 F.2d 1351, 1366 (D.C. Cir., 1993). Here, Schoenbohm's crime (making long distance telephone calls without paying for them) pales when compared to the crimes of murder or possessing marijuana with intent to distribute and cultivating marijuana on government property. If the FCC could forgive murder and marijuana convictions (and it did), it surely can forgive misuse of the telephone system stemming from events that were remote in time on the part of an individual who had a spotless record before his conviction, has had a spotless record since his conviction, and has been thoroughly rehabilitated.

**C. The ALJ Erred When He Found that Schoenbohm Was Guilty  
of Lack of Candor**

27. In his Initial Decision, the ALJ found that Schoenbohm had lacked candor because, while Schoenbohm admitted in his written testimony that he used unauthorized telephone numbers to make long distance telephone calls, he testified at the hearing that his crime was the possession in his mind of the unauthorized telephone numbers. As indicated earlier, the ALJ did not

accurately quote the provisions of 18 U.S.C. §1029(e)(1), which define the term "access device" to include any "card, plate, code, account number, electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier, or other means of account access . . ." that can be used for improper purposes. Also, the ALJ ignored the provisions of Sections 1029(a)(3)-(a)(6), which specifically relate to the possession and use of mechanical access devices, e.g., computer hardware and software, modified telecommunications instruments, etc. The purpose of counsel's questions to Schoenbohm at the hearing, which Schoenbohm answered truthfully, was to establish truthfully that Schoenbohm did not produce or possess any counterfeit credit cards, plates, or other electronic apparatus, and or useful to make calls without paying for them. If the ALJ had correctly taken into account these other provisions of Section 1029, he would have understood the distinction that counsel and Schoenbohm were trying to make. Schoenbohm never denied using the telephone access codes; he specifically admitted that in two written statements. It was certainly not lack of candor for him to explain at hearing that it was only codes in his mind that he used and not physical apparatus. After all, if Schoenbohm had been engaged in the manufacture or production of counterfeit credit cards or other counterfeit hardware, or if he had sold such materials to others, it would have been a much more serious matter.

**D. The ALJ Erred When He Concluded that Schoenbohm Should Be Stripped of His License Because of a Violation of the Ex Parte**

**Rules**

28. At ¶25 of his Initial Decision, the ALJ asserts that there is no record evidence to support Schoenbohm's claims that his remarks tape recorded by LeBlanc were nothing more than "an exposition of his newly acquired knowledge" of the ex parte rules. That is not the case. John Dellinger, a licensed radio operator, testified that he had known Schoenbohm since 1988 or 1989, and had regularly communicated with Schoenbohm on the 20 meter ham band two to three times a week (Tr. 94-5). According to Dellinger, Schoenbohm often expounded on his knowledge of the FCC rules (Tr. 95). Thus, when Dellinger heard Schoenbohm discussing the ex parte rule he was not surprised, because Schoenbohm frequently discusses the rules (Tr. 95-6).

29. Further corroboration that Schoenbohm's remarks were merely an exposition of his newfound knowledge of the ex parte rules is found in the LeBlanc tape, itself, which was introduced in evidence as Schoenbohm Exhibit 3. At pages 3 and 4 of the transcript, there is a lengthy discussion of the FCC rules and Schoenbohm quotes extensively from those rules. In fact, at page 4 of the transcript, the man who made the transcript, LeBlanc, makes the following comments:

"LeBlanc: He reads the rules and the rules and the rules and what not but he has no sense of values whatsoever; no consideration for anybody other than Schoenbohm. The rights of other people don't mean anything to him. [pause] He is going to police the Federal Communications Commission. He's gonna police all the hams in the world, including the ITU, whatever, the original ugly American, ugly American known all over the world as an ugly

individual." (Schoenbohm Exhibit 3, pg. 4.)

Thus, even LeBlanc was familiar with Schoenbohm's habit of extensively quoting from the FCC rules and exhibiting his knowledge of the rules.

30. There was also specific testimony by still another radio amateur, Malcolm B. Swan, who heard the conversation, that he did not interpret it as an attempt to get people to write or contact any member of Congress (Schoenbohm Exhibit 6)

31. Finally and most significantly, the ALJ ignored an important stipulation that was entered on the record of the hearing. In that stipulation, the WTB admitted specifically that the Commission never did receive any letters from elected officials on Schoenbohm's behalf (Tr. 34). Therefore, even if Schoenbohm's remarks could be interpreted as an ex parte solicitation, it was an ineffective solicitation, because no elected officials either wrote or contracted the Commission on Schoenbohm's behalf.

32. In any event, Schoenbohm specifically admitted that prior to learning of the ex parte rules he did, in fact, write certain letters to elected officials (Schoenbohm Exhibit 7, pg. 1). He did not have to admit that, but he did so because of his desire to be forthright with the Commission. Of course, as soon as Schoenbohm learned of the existence of the ex parte rules, he wrote no further letters to elected officials (Schoenbohm Exhibit 7, pg. 1).

33. The ALJ cites no cases in which the FCC has ever disqualified an applicant where, as here, there was an innocent,

i.e., unknowing, violation of the ex parte rules. There is no such case. Indeed, an exhaustive search by counsel has failed to uncover any case where the Commission has ever disqualified an applicant for violation of the ex parte rules, even where the violation was not innocent, i.e., not the result of ignorance. Thus, it was error for the ALJ to disqualify Schoenbohm as he did, because of an innocent ex parte rule violation, resulting from ignorance. Melody Music, cited supra.

#### IV. CONCLUSION AND REQUEST FOR ORAL ARGUMENT

1. As shown, Schoenbohm had a spotless record until he was 53 years old, never having been convicted of even a speeding violation. Although he was an active radio amateur with an outstanding record of public service, the record is bereft of any evidence showing that he ever violated any of the FCC's rules.

2. When Schoenbohm was 53 years old, however, he became involved in a dispute with a local resaler of telephone service, which resulted in a single conviction for use of a "counterfeit access device". That counterfeit access device, however, was not a forged credit card or any form of electronic or mechanical paraphernalia. It was simply his knowledge of unauthorized telephone codes.

3. The events which led to Schoenbohm's conviction occurred nine years ago. Since his conviction there have been no more incidents and, in the interim, Schoenbohm has been fully rehabilitated and has been appointed to responsible positions by both the Governor of the Virgin Islands and the elected Delegate of



the Virgin Islands to the Congress of the United States.

4. Failure to renew Schoenbohm's license is inconsistent with the treatment afforded to other like-situated applicants. The Commission has renewed the licenses of murderers and marijuana peddlers whose crimes were far more serious than the crime of Herbert L. Schoenbohm. Therefore, Schoenbohm's license must be renewed, simply to be consistent with Commission precedent.

5. Oral argument on these exceptions is respectfully requested.

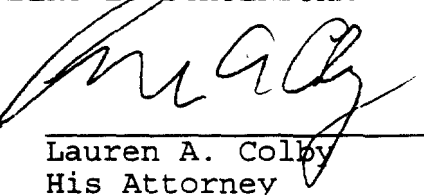
Respectfully submitted,

February 23, 1996

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